

191—50.40(502) Minimum financial requirements for investment advisers.

50.40(1) An investment adviser registered or required to be registered under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“*d*” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

b. An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“*e*” or 50.39(2)“*c*” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

c. An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3)“*a*”(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;

d. An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3)“*a*”(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and

e. An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“*f*” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the net worth requirements of this rule.

50.40(2) An investment adviser registered or required to be registered pursuant to the Act that has discretionary authority over client funds or securities but does not have minimum net worth requirements due to the custody exceptions of subrule 50.40(1) shall maintain a minimum net worth of \$10,000 at all times.

50.40(3) An investment adviser registered or required to be registered pursuant to the Act that accepts payment of more than \$500 from a client six or more months in advance of providing services shall maintain a positive net worth at all times.

50.40(4) Unless otherwise exempted, an investment adviser registered or required to be registered pursuant to the Act shall notify the administrator if the investment adviser’s net worth is less than the minimum required. Notice must be filed in a report to the administrator no later than the close of business on the next business day following the decrease in net worth. Additionally, an investment adviser shall file by the close of business on the next business day a report with the administrator of the investment adviser’s financial condition including, at a minimum, the following:

a. A trial balance of all ledger accounts;

b. A list of all client funds or securities which are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. The total number of client accounts managed by the investment adviser.

50.40(5) The administrator may require the submission of a current appraisal for the purpose of establishing the worth of any asset.

50.40(6) An investment adviser that has its principal place of business in a state other than this state is not required to maintain the minimum capital required by this rule provided that the investment adviser is registered as an investment adviser in the state in which the investment adviser has its principal place of business and is in compliance with that state’s laws regarding minimum capital requirements.

50.40(7) For purposes of this rule:

a. “Net worth” means an excess of assets over liabilities calculated in accordance with generally accepted accounting principles. The calculation of assets shall not include the following: prepaid expenses (except those prepaid expenses classified as assets under generally accepted accounting principles); deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; home(s), home furnishings, automobile(s), or any other personal items not readily marketable; advances or loans to stockholders or officers; and advances or loans to partners.

b. “Custody” means the same as defined in paragraph 50.39(3)“*a.*”

c. An investment adviser shall not be deemed to be exercising discretion when the investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(1) The investment adviser has executed a separate investment adviser contract exclusively with the investment adviser's client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

(3) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

This rule is intended to implement Iowa Code section 502.411(1).